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EXTRAORDINARY

PART II—Section 3

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No. 24] NEW DELHI, FRIDAY, JANUARY 23, 1953

ELECTION COMMISSION, INDIA.

NOTIFICATION

New Delhi, the 23rd January, 1953

S.R.O. 214.—WHEREAS the election of Shri K. Venkatramana Gowda, Advocate, Puttur, District South Kanara and Shri K. Ishwara of Nanthur Padavu, Mangalore Taluk, Post Kulshekar, South Kanara, as members of the Legislative Assembly of the State of Madras, from the Puttur Constituency of that Assembly has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri K. Shivarama Karanth, Puttur Kasba, District South Kanara, Madras State;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission.

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT MANGALORE

In the matter of the petition presented by Shri K. Shivarama Karanth calling in question the election of Shri K. Venkatramana Gowda and Shri K. Ishwara as members of the Legislative Assembly of the State of Madras from the Puttur Constituency.

Saturday, the 17th day of January 1953

PRESENT:—

Shri P. T. Raman Nayar, I.C.S., *Chairman.*

AND

(1) Shri M. Ramachander, B.A., B.L.,

(2) Shri K. V. Suryanarayana Ayyar, B.A., B.L., *Members.*

ELECTION PETITION No. 102 of 1952

BETWEEN

K. Shivarama Karanth, s/o Kota Shesha Karantha, Author, residing at Puttur Kasba in South Kanara, Post Puttur.—*Petitioner.*

AND

1. K. Venkatramana Gowda, s/o Kumbhappa Gowda, Advocate, practising at Puttur, South Kanara, Post Puttur.
2. K. Ishwara, s/o Chandu, Contractor, residing at Nanthur Padavu, Mangalore Taluk, Post Kulshekar, South Kanara.
3. M. Ramanna Naika, s/o Krishna Naika, residing at Darbe in Puttur Kasba, South Kanara District, Post Puttur.

4. Berva, s/o Bogra, residing at No. 3 Jagannathapura School Street, Kilpauk, Madras.
5. S. G. Salcna, s/o Thukra, Editor, "Dalitha Bandhu" residing at Kankady, Mangalore 2.—*Respondents*.

This petition coming on for trial on the 27th, 28th, 29th and 31st days of October, 1st, 3rd and 4th days of November, and the 15th and 16th days of December 1952: Upon perusing the petition, the objections filed by respondents 1 and 2, and 3 and other material papers in the case, and upon hearing the arguments of Sri K. Sadashiva Rao and Sri G. K. Govinda Bhat, advocates for the petitioner, of Sri K. Sadananda Hegde and Sri N. N. Suvarna, advocates for respondents 1 and 2, of Sri K. S. N. Adiga, advocate, and Sri S. Venkat Rao, pleader, for the 3rd respondent, and of the Government Pleader, South Kanara on behalf of the Advocate General, Madras, and respondents 4 and 5 not appearing either in person or by pleader, and having stood over for consideration till this day, the Tribunal made the following.

ORDER

In the last general elections to the Madras State Assembly, Puttur was a two-member constituency. The petitioner and the 1st respondent contested the general seat, the former on the K.M.P.P., and the latter on the Congress ticket. For the reserved Scheduled Castes' seat, respondents 2 to 5 were the contestants. Of these, the 2nd respondent was the Congress, and the 3rd respondent, the K.M.P.P. candidate. The polling was on the 8th January 1952 and the counting of votes on the 16th and the 17th January. The 1st respondent was declared elected to the general seat and the 2nd respondent to the reserved seat. The petitioner challenges the election as being wholly void, on the ground that it was procured by the commission of corrupt and illegal practices with the connivance of respondents 1 and 2 and of their election and other agents, that there were serious and flagrant violations of, and non-compliance with, the Representation of the People Act (Act No. XLIII of 1951) and the mandatory rules framed thereunder, and that the result of the election has been materially affected by such violation and non-compliance. He makes the grave allegation that between the date of the polling and the date of the counting the ballot boxes of the several candidates were secretly opened with the connivance of the Returning Officer and others in charge of the election, and ballot papers from the boxes of the remaining candidates transferred to the boxes of respondents 1 and 2. Unused ballot papers and papers not issued to any polling station were likewise inducted into the boxes of respondents 1 and 2. The boxes from as many as 24 polling stations involving over 36,000 votes showed signs of having been tampered with. No verification was done as required by Rule 49 and the Form 10 accounts of about 30 booths are still not forthcoming. He further asserts that respondents 1 and 2 procured the assistance of the President of the South Kanara Central Co-operative Wholesale Stores Ltd. for the furtherance of their prospects, that the Stores is the agent of the Collector for the procurement and distribution of foodgrains throughout the district, and that its President actively worked for the respondents 1 and 2 and used the Stores car for the election campaign. The next charge is that the 1st respondent, being a member of the South Kanara Area Committee, constituted under the Madras Hindu Religious and Charitable Endowments Act, 1951, exercising the powers of an Assistant Commissioner over minor temples, holds an office of profit under the State Government and is consequently disqualified under Article 191 (1) (a) of the Constitution and, that this objection raised at the time of the scrutiny of the nomination papers was improperly rejected by the Returning Officer.

2. Respondents 1 and 2 filed a common objection statement repudiating the allegations of corrupt and illegal practices and of the violation of or non-compliance with the mandatory provisions of Act XLIII of 1951 and the rules framed thereunder. They deny that the result of the election has been materially affected by any such violation or that the election is liable to be set aside. They characterise the allegations of tampering and of the transfer of ballot papers into their boxes as false and desperate allegations made without a due sense of responsibility. It is true that some of the boxes were not properly sealed by the Presiding Officers and that in some the seals were damaged in transit. But no box was capable of being opened and none showed signs of having been tampered with. Respondents 1 and 2 also state that the allegation that they procured the assistance of the President of the South Kanara Central Co-operative Wholesale Stores is false, that he is not a Government servant precluded from working for any party or candidate, and that neither the South Kanara Central Co-operative Wholesale organisation nor its car was used for the election campaign, and that the 1st respondent, by reason of his being a member of the Area Committee under the Madras

Hindu Religious and Charitable Endowments Act, is not a person holding an office of profit within the meaning of Article 191 of the Constitution. This last objection is, moreover, barred by limitation; also the petitioner, not having raised it at the time of the scrutiny of nominations, is precluded from raising it now.

3. The 3rd respondent supports the petitioner and prays that the election of respondents 1 and 2 should be declared void.

4. The other respondents have remained *ex-parte*.

5. The following issues were framed by the Tribunal:—

1. Were the ballot boxes tampered with? and

(a) ballot papers other than of votes validly cast for them put into the boxes of respondents 1 and 2? and

(b) ballot papers of votes cast for the other candidates removed from their boxes?

2. Did the President of the S.K.C.C.W. Stores, Ltd. work for respondents 1 and 2? If so, was this a corrupt or illegal practice?

3. Did the Returning Officer fail to comply with the Rules in the matter of the counting of votes and verification of ballot paper accounts?

4. Was the result of the election materially affected by the corrupt and illegal practices and non-compliance with the provisions of the Act and the rules and orders made thereunder as set forth in issues 1 to 3?

5. Is the 1st respondent disqualified under Article 191 of the Constitution of India from being chosen as a member of the Madras Legislative Assembly? If so, has this Tribunal no jurisdiction to declare his election void?

6. Was the objection in issue 5 taken by the petitioner before the Returning Officer? If not, is he precluded from taking the objection now?

7. Is the petition defective for non-compliance with the provisions of section 83(2) of the Representation of the People Act, 1951? If so, is it liable to be dismissed under section 90(4) of the said Act?

8. To what relief?

6. Issues 1 and 3.—As the evidence in respect of these issues overlaps, we shall consider them together. Grave and serious accusations have been made that the officers in charge of the election yielded to the pressure and influence of local Congress leaders and helped respondents 1 and 2 to tamper with the ballot boxes. The charge is that between the dates of polling and the counting of votes, ballot papers from the boxes of the opposing candidates were transferred to those of respondents 1 and 2, by secretly opening the boxes. It is stated that ballot papers were discovered in the ballot boxes of stations situated far from the stations of issue clearly indicating transfer of votes from one box to another at the assembling centre, that the ballot boxes of respondents 1 and 2 contained a large number of unauthorised ballot papers, that respondents 1 and 2 and their agents with the connivance of the Returning Officer induced into their boxes a large number of unused ballot papers issued to polling stations, but not issued to the voters, that unused ballot papers returned from one polling station have been found in the ballot boxes of respondents 1 and 2 belonging to a different station and that ballot papers not issued to any polling station were also found in the boxes of respondents 1 and 2. In view of these charges we considered it necessary to issue notice to the Advocate General under section 89 of the Act and also desired the attendance of the Returning Officer. The Returning Officer was examined as a witness for the Tribunal and was questioned at length by both sides. He has categorically denied the charges and we are satisfied on the evidence that the charges are altogether unfounded. The boxes were kept in a locked room under police guard and any tampering could have been possible only as a result of a conspiracy to which not only respondents 1 and 2 but the Returning Officer and his staff and the police guard were parties. Apart from the denial of the Returning Officer and the absence of any evidence to establish the charge, we think this to a high degree improbable.

7. The petitioner states that he pointed out to the Returning Officer at the time of the counting of votes that the seals of the boxes from 24 stations were not in order. The Returning Officer in his evidence agrees that he noticed certain defects in the boxes, mainly due to the carelessness in which the Presiding Officers secured and sealed the metal cover. In the presence of the candidates he carefully inspected the defects and he enumerates them thus:—

“(1) In a few boxes the metal cover was not properly secured. The cover was not wired to the platform through the holes provided.

- "(2) Inside, after opening the cover I found that in a few boxes, the bolt after having been driven home, had not been wired to the platform through the two sets of holes provided. In some cases the wire had not been twisted properly and the ends were more or less loose.
- "(3) In a few boxes the seals were not in the proper place. Even so, in the case of no box—so far as I noticed or was brought to my notice—could the bolt be moved and the lid of the box opened without snapping the twine or disturbing the seals.
- "(4) In a few boxes there were no inside seals at all, and all seals had been affixed on the lid outside."

He states that the result of his examination of the boxes thus:—

"In the case of every defective box I satisfied myself that either by reason of the outer seals being properly affixed and intact, or the inner seals being properly affixed and intact, the box could not have been opened after they were (sic) secured by the Presiding Officer and before the counting. There was no case where the bolt had not been driven home."

We accept the testimony. Nor has the evidence of the petitioner or his witness, Sri N. S. Bhat, shaken in any measure the force of the Returning Officer's narration. The petitioner merely states that the boxes were openable without disturbing the seals. His complaint, Exhibit A3, to the Returning Officer about the insecure condition of the ballot boxes reads, "A large number of boxes received from as many as twenty polling stations have revealed the following defects—causing or capable of causing insecurity of the same, no sealing, openable lids in spite of sealing caused by not wiring securely, loose strings, hanging seals not wiring at all etc." His prayer therein for the postponement of the counting was refused by the Returning Officer as he was satisfied, "there are no grounds to hold or infer that any of the ballot boxes used at the present election has been interfered or tampered with. *Sri Karanth himself has made no such allegation.*" (See Exhibit A4).

8. The petitioner says, "It is only the study of election records together with the defects I noticed in the boxes, that led me to the conclusion that there was tampering. I had no direct information on the point." His attention was pointedly invited to paragraph 8 of the petition, which deals specifically with the case of secretly opening the ballot boxes and transferring votes, and he answers, "The basis of my allegation in para. 8 to the effect that ballot papers were transferred from one box to another is the discrepancy found in the ballot paper accounts and the fact that many of the boxes were not secured against unauthorised opening." The particulars are given in Lists I, II and III annexed to the petition. To elucidate the position, the petitioner tendered, at the opening of the trial, an analytical statement in respect of the ballot papers accounts, which according to him afford "intrinsic evidence of tampering."

9. Item I in this statement relates to the case of unused ballot papers having been found in the boxes of respondents 1 and 2; and item II to ballot papers issued and used at one station being discovered in the boxes of respondents 1 and 2 at a different and distant station.

10. The Tribunal called for and examined the packets of used, unused and rejected ballot papers in the presence of the parties. As a result the petitioner's counsel himself was satisfied that except with regard to item II(1) of his statement his inferences were wrong and he filed a memo dated 12th December 1952 to that effect. In respect of item II(1) of the statement, the petitioner presses his objection. The Form 10 accounts show that ballot papers Nos. 180914A, 180759A, 180507A, 180726A, 180684A, 180908A, 180859A and 180725A were issued at station No. 248, Aranthodu. But the Form 15 accounts show these 8 ballot papers were among the rejected votes of the 1st respondent in station No. 240/1, Mandekolu. The inference suggested is that ballot papers from the Aranthodu boxes must have been transferred to the 1st respondent's box of Mandekolu; and the argument is that similar transfers must have taken place on a large scale, although only this case has been detected. The Tribunal has checked the packets of valid and invalid votes of the 1st respondent in both the stations, No. 248 (Aranthodu) and No. 240/1 (Mandekolu) with reference to the check-slips. Exhibits T5 and T5(c). The check-slips show that the 1st respondent has 221 valid and 18 invalid votes in Station No. 240/1 (Mandekolu) and 480 valid and 8 invalid votes in Station No. 248 (Aranthodu). But while there is no packet of invalid votes for the 1st respondent in station No. 248 (Aranthodu), there are two packets of invalid votes one containing 18 and the other 8 ballot papers for No. 240/1 (Mandekolu). The same mistake appears in the Form 15 accounts where there

are two separate entries showing 8 and 18 rejected votes for the 1st respondent for station No. 240/1 (Mandekolu), and no entry in respect of station No. 248 (Aranthodu). Obviously the packet of 8 is of station No. 248 (Aranthodu) but was wrongly shown as of station No. 240/1 (Mandekolu). These is, however, the circumstance that the 8 corresponding ballot papers (without the suffix A) were not found among the packets of valid votes of either station. While the petitioner's counsel argues that this is indicative of a transfer of votes from the boxes of the one station to the boxes of the other station, he is unable to explain why the A-series alone were carefully picked in the secret process of transfer. The more reasonable and acceptable explanation is that either at the counting table where the valid and invalid votes were separated or at the Returning Officer's table where they were scrutinised or at the time of the packing and labelling of the votes these missing ballot papers might have got mixed up with others and are, therefore, not traceable. Such a mistake is likely when 1206 boxes containing nearly 1,50,000 ballot papers were counted and the papers packed in the course of about 18 working hours. The Returning Officer states, "It is quite possible that in spite of all care, in the process of bundling and packing, the papers of one booth might have got bundled up in the packet of another booth", and we are satisfied that that must have been the case.

11. On issue 3 it is stated that Form 10 accounts in respect of about 30 booths were not available at the time of the counting and that there was no verification as required by rule 49 either before the declaration of the result or the submission of the return in Form 16. The Returning Officer concedes that at the time of the verification, the Form 10 accounts of about 15 booths were not forthcoming. Some were since discovered. It has to be remembered that the polling for the Parliamentary seat for South Kanara South Constituency also took place simultaneously in the same polling stations and booths, with the same set of Presiding Officers. The Returning Officer deposes, "In checking, we found that some of the Parliamentary seat statements were in our covers and we sent them to the Collector. The Collector in turn sent me some of our statements found in the Parliamentary covers." When a large contingent of men and women numbering 700 were drafted from every conceivable quarter for election work with insufficient knowledge and training, it is not a matter of surprise that such mistakes did occur. We see no reason to suspect that there has been any suppression of Form 10 accounts as suggested by the petitioner. After all, the absence of a few Form 10 accounts could not render the work of verification impossible. The total number of valid, invalid and returned-cancelled and unused papers of each booth should tally with the number of ballot papers issued for that booth. And, as the Returning Officer has explained, there are means of verifying this even in the absence of the Form 10 accounts. We see no reason for disbelieving the evidence of the Returning Officer that such verification was done. We are satisfied that Rule 49 has, in substance, been complied with.

12. Another irregularity pointed out relates to station No. 236 (Aivarnad). There a mistake was committed by the Presiding Officer in the issue of ballot papers. Ballot paper Nos. 167001 to 167100 were issued without the corresponding ballot papers with the suffix A being issued along with them. Instead, the ballot papers 167701-A to 167800-A were issued. 167001-A to 167100-A and 167701 to 167800 were not issued—see Exhibit T1, the report made by him. But what follows? Assuming, what is highly improbable and is only a theoretical possibility, that every one of these was a cumulative vote cast for the 1st respondent which escaped detection and rejection by reason of the wrong issue of the papers with the suffix A, it can only mean that the 1st respondent got hundred votes which should have been but were not rejected. But this, it is clear, has not affected the result. The figures of recorded votes for each candidate as given in Exhibit A5 (Form 16 return) speak for themselves:

4th respondent	...	...	6,763 votes.
1st respondent	...	...	42,735 votes.
2nd respondent	...	...	42,299 votes.
Petitioner	...	...	27,947 votes.
3rd respondent	...	...	22,339 votes.
5th respondent	...	...	2,811 votes.
Total number of valid votes	...	...	1,44,894
Total number of invalid votes	...	...	3,830
Total number of tendered votes	...	...	13

13. Our finding on issue 1 is that the petitioner has failed to sustain to any extent his charge of tampering and the alleged introduction of ballot papers into the boxes of respondents 1 and 2 and removal of ballot papers from the boxes of

the other candidates. On issue 3 we hold that there was *substantial* compliance by the Returning Officer in the matter of the counting of votes and verification of ballot paper accounts.

14. *Issue 2.*—Paragraph 17 of the petition charges respondents 1 and 2 with the commission of a major corrupt practice under section 123(8) of the Act. The allegation is that they procured the assistance of Sri M. Shiva Rao, the President of the South Kanara Central Co-operative Wholesale Stores, for the furtherance of the prospects of their election. The Stores is the agent of the Collector for the purpose of procurement and distribution of foodgrains with a net-work of depots throughout the district. The President is its chief executive head. We are not satisfied that either on facts or law, this attack is sustainable. No evidence is tendered to show the nature of the relationship between the Collector and the Stores. At best, it is one of agency. The procurement work is exclusively in the hands of revenue officers. The Stores only receives the procured food-stuffs and distributes them for sale to the various ration shops. The petitioner as P.W. 1 agrees, "Mr. M. Shiva Rao is the elected President of the S.K.C.C.W. Stores. Mr. M. Shiva Rao gets no salary as such from the Stores, but he gets allowances and a free car. What allowances and for what purpose, I cannot say." His witness, P.W. 4, states, "The Government neither appoints nor removes directors or presidents of Co-operative societies." He also admits that the allowances are paid by the Stores. Nor is there any proof that the assistance of Sri M. Shiva Rao was procured by respondents 1 and 2 in respect of their election campaign. The petitioner once saw the 1st respondent and Sri M. Shiva Rao going in the Stores car; he says, "presumably they had gone on election business—I have no personal knowledge." The witnesses examined to prove this allegation have said nothing that supports it. We hold it not proved that the President of the South Kanara Central Co-operative Wholesale Stores worked for respondents 1 and 2; even if he did, he is not a person serving under the Government so as to attract the provisions of section 123(8).

15. *Issue 4.*—We have found on issues 1 to 3 that there were no corrupt or illegal practices and that there was *substantial compliance* with the provisions of the Act and the Rules. We answer this issue in the *negative*.

16. *Issues 5 and 6.*—The next ground of attack is levelled directly against the 1st respondent. The charge is that he is a member of the South Kanara Area Committee appointed under the Madras Hindu Religious and Charitable Endowments Act, 1951; exercising all the powers of an Assistant Commissioner in regard to minor temples in the district, and that as this is an office of profit under the State Government, he is disqualified by Article 191 of the Constitution from being chosen as a member of the Madras Legislative Assembly. His nomination should, therefore, have been rejected under section 36(2) (b) of the Act. Another candidate for the general seat, Sri M. N. Bhide (who subsequently withdrew), had raised this objection at the time of the scrutiny of nominations on 28th November 1951. The order passed was, "Held that membership in the Area Committee is not an office of profit." (See Exhibit A14).

17. Article 191 of the Constitution reads:

"A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

"(a) if he holds any office of profit under the Government of India or the Government of any State, specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder."

The points that call for consideration are:—

1. Whether membership of the Area Committee is an office?
2. Whether it is an office of profit? and
3. Whether it is held under the Government of the State?

18. Section 6(1) of the Madras Hindu Religious and Charitable Endowments Act, 1951 defines an Area Committee. It is one of the authorities under the Act. Sections 12, 13 and 14 deal with the jurisdiction of the Committee and its subordination to the Commissioner, himself a full time Government servant. The Committee has powers to enter a religious institution, to check its registers, to call up the accounts etc.; to inspect its property and documents and has also authority to appoint trustees and to fix standards of expenditure. A member of the Committee is appointed by Government and holds office for three years from the date on which

the appointment is published in the Official Gazette. It is agreed that the appointment of the 1st respondent as a member of the Area Committee was notified in the Gazette of 2nd October, 1951, long before he filed his nomination. It is clear that he holds an office under the State Government.

19. The further and more difficult question is whether it is "an office of profit" within the meaning of Article 191 of the Constitution. What constitutes an office of profit does not admit of a ready answer. If the natural connotation of the word "profit" is any guide, we may assume that some remuneration or emoluments should be attached to the office. The dictionary meaning of the word "profit" is "gain, advantage, improvement, benefit, addition to good or value." More specifically it means "pecuniary gain" and it is in this sense, we think, that it is used in Article 191.

20. At page 197 of May's Parliamentary Practice (fifteenth edition), there is a discussion on "Disqualification of certain office-holders." The principle deduced is stated at page 212:—

"What constitutes an office, or place, one of profit is often a question of difficulty as well as urgency The principle that has been adopted is that, if emoluments have ever attached to the office, the fact that emoluments are not received by the particular holder is irrelevant."

Acts of indemnity to save office-holders from possible penal consequences were frequently resorted to. May instances Jenkins' case where a sitting member held the office of Chairman of the local appeal board for a Royal Ordnance factory. Though no salary was attached to the office, there was a small sum payable *per sitting*. It was, therefore, found necessary to pass the Arthur Jenkins Indemnity Act, 1941. The author also cited the Coatbridge and Springburn Elections (Validation) Act. The reason for that Act was that membership of the tribunals appointed by the Minister under the Control of Furnished Rents Act, 1943 carried with it a trial amount for subsistence and travelling allowances. It is clear that remuneration, however trivial, is an essential element.

21. The petitioner's counsel strenuously contends that membership of the Area Committee carries remuneration. Section 100, the rule-making provision, empowers the Government to make rules for, "the grant of travelling and halting allowances to the members of the Area Committees"—see sub-section 2(t). It is argued that the rule framed thereunder gives to the members of the Area Committee remuneration in the shape of travelling allowance and halting allowance. This is on the scale admissible to Government servants of grade V, which means six annas mileage (or three annas if the places are connected by bus) and a halting allowance of Rs. 5-4-0 per day. Can this, by any stretch of language, be treated as emoluments? At the most, it may represent reimbursement, on a by no means over-generous scale, for out-of-pocket expenses which must necessarily be incurred by a member in undertaking journeys and for halting for purposes connected with the duties of the Committee. It is not disputed that the 1st respondent is entitled to neither travelling allowance nor halting allowance when the Committee meets at his own place. This shows that what is paid is in no sense remuneration. A subsistence allowance or a sitting fee, however trivial, stands on a different footing.

22. Our attention was drawn to the report of the judgment of the Election Tribunal in Hansa Jivraj Mehta's case (Gazette of India Extraordinary, Part I, dated 23-8-1952 at page 2009) where the question was, whether the office of Vice-Chancellor of the University of Baroda carrying an honorarium of Rs. 500 per mensem and car allowance of Rs. 150 per mensem and in addition free furnished quarters disqualified its holder from standing for election to the House of the People under Article 102(1)(a) of the Constitution. There can be little doubt that the pecuniary gain derived from the office—which can scarcely be disguised by calling it an honorarium or a car allowance—makes it an office of profit. But the point raised was that the profit did not proceed from the State Government but from the University funds. This, however, the Tribunal held, did not save it from the disqualification so long as the office was (as the Tribunal demonstrated) held under the State Government and profit—from what source was immaterial—was attached to it. The Tribunal observes at page 2010:

"The idea behind the provision is that there should be no conflict between the duties of a member of a legislature as such and his interests.

In other words the object of Article 102(1)(a) is to disqualify a person from membership of the legislature if he is indebted to Government for an office which carries profit and thus compromises his independence."

This case, if anything, emphasises that profit is necessary before the disqualification is incurred.

23. Nevertheless it is argued for the petitioner that the holding of the office of a member of an Area Committee is incompatible with membership of the Legislature, as the office-holder is subject to the administrative control of the Government (Ministers), and as he cannot freely exercise his judgment when matters relating to Hindu Religious and Charitable Endowments are debated in the Legislature. Therefore, the office comes within the intendment of Article 191, and, "profit" there does not necessarily mean pecuniary gain. Honour, prestige and like advantages suffice to constitute profit. But we are here concerned with the plain interpretation of a statute and not with the public policy underlying it. We are loth to place an interpretation which does not give the words "of profit" their due weight. If honour and prestige were sufficient to constitute profit, then those words were unnecessary, for, any office under the Government must, we conceive, carry in some measure those attributes. Pecuniary advantage, it would appear, is an essential element, although once there is, or there can be, pecuniary gain, its quantum seems to be immaterial. If the extreme interpretation placed by the petitioner were to be accepted, any office under the Government, though strictly honorary, would be hit. The analogy of what would appear to be similar offices being disqualifying offices in England is of no avail; for, there it is to be remembered, the disqualification is mostly imposed in express terms by the statute constituting the office in question, and not by the general disqualification contained in section 24 of the succession to the Crown Act, 1707 (6 Ann. c. 41) which corresponds to Article 191 of the Constitution. We do not consider that the Constitution intended to impose a wholesale ban on every type of office, irrespective of whether any remuneration is attached to it or not. We decline to place such a construction, as, we believe, that such an intention does not follow from a reading of the clause.

24. Reliance is placed on the wording of section 2 of The Parliament (Prevention of Disqualification) Act, 1951 for the argument that membership of any committee appointed by the Government of India or the Government of a State is necessarily an office of profit attracting the disqualification in Articles 102(1) (a) and 191(a) of the Constitution. The language of the section apparently lends support to the argument. So far as is material, the section runs as follows:—

"It is hereby declared that the following offices of profit under Government shall not disqualify, and shall be deemed never to have disqualified, the holders thereof for being chosen as, or for being, members of Parliament:—

* * * * *

"(c) the office of Chairman or member of any other Committee appointed by the Government of India or the Government of any State, held for any period not extending beyond the 31st day of March, 1952."

But we do not consider that the wording of an exempting statute, which naturally tends to be over-reaching by way of abundant caution, is a safe guide as to what would otherwise fall within the mischief of the rule from which absolution is conferred. And despite its language we are of the view that what the Act really means to say is that the offices enumerated therein are saved from the disqualification even if they happen to be offices of profit; not to declare them offices of profit. Moreover, membership of the Committees named in clauses (a) to (d) of the section carries with it, we believe, remuneration in some form or other and "any other committee" in clause (e) must be read *ensdem generis* with the earlier clauses and be regarded as confined to committees of a like nature.

25. On the first part of issue 5 we find that the 1st respondent is not disqualified. On this finding the second part does not arise for consideration, although we may say that the contention raised therein is obviously untenable, for, if there were in truth a disqualification the case would fall under section 100(1)(c) of the Representation of People Act, 1951.

26. *Issue 6* has not been argued and we are aware of no provision of law which requires that the petitioner should have taken the objection before the Returning Officer if he is to take it here.

27. *Issue 7*.—No arguments have been addressed on this issue and it has not been shown in what respects particulars are wanting.

28. *Issue 8*.—The result is the petition fails and is liable to be dismissed; and we order accordingly. The petitioner will pay respondents 1 and 2 their costs which we fix at Rs. 250 on the whole. He will also pay the costs of the law officer whose presence was rendered necessary by reason of the attacks made against the officers in charge of the election. We fix such costs at Rs. 50. The costs ordered will carry interest at 3 per cent. from this date.

Dictated to the shorthand writer, transcribed by him, and pronounced in open Court, this, the 17th day of January 1953.

(Sd.) P. T. RAMAN NAYAR, *Chairman*.

(Sd.) M. RAMACHANDER,

(Sd.) K. V. SURYANARAYANA AYYAR, *Members*.

APPENDIX

The following exhibits were filed:

FOR PETITIONER

- A-1.—Printed copy of list of polling stations in the Puttur Assembly Constituency and South Kanara (South) Parliamentary Constituency.
- A-2.—Printed copy of instructions for the guidance of Presiding Officers and Assistant Presiding Officers and polling clerks (*Presiding Officers' Circular No. 1*) and Presiding Officers' Circular No. 2.
- A-3. (17-1-1952).—Certified copy of application by Shri Shivarama Karanth (Petitioner) to the Returning Officer, Puttur Assembly Constituency.
- A-3(a). (17-1-1952).—Original of Exhibit A-3 (same as Exhibit A-19).
- A-4. (17-1-1952).—Certified copy of proceedings Ref. 5303/50 of the Returning Officer, Puttur Assembly Constituency—(order on Exhibit A-3).
- A-4(a). (17-1-1952).—Portion marked in Exhibit A-4.
- A-4(b). (17-1-1952).—Original of Exhibit A-4 summoned from election records.
- A-5. (17-1-1952).—Certified copy of return in form No. 16 prepared by the Returning Officer, Puttur Assembly Constituency.
- A-6. (6-3-1952).—Order Ref. C. No. 5303/50-E passed by the Returning Officer on the application, dated 4-3-1952 of Sri N. S. Bhat, Advocate, Puttur.
- A-7. (29-5-1952).—Memo. No. 5303/50-C of the Revenue Divisional Officer, Puttur on the application of Sri N. S. Bhat, Advocate, Puttur.
- A-8. (27-6-1952).—Endorsement issued by the Returning Officer, Puttur Assembly Constituency on the petition, dated 9-5-1952 of Sri N. S. Bhat, for certified copy of form 10 accounts.
- A-9. (18-1-1952).—Form No. 15 account (in original) of rejected ballot papers found in the ballot boxes of 1st respondent.
- A-10. (18-1-1952).—Form No. 15 account (in original) of rejected ballot papers found in the ballot boxes of 2nd respondent.
- A-11.—A sketch of the area covered by the Puttur Assembly Constituency in the General Elections.
- A-12. (8-1-1952).—List of articles handed over by the Presiding Officer, Polling Station No. 209 (Puttur) in respect of Booth No. 2, with an acknowledgment of the Revenue Inspector, Puttur, at the foot.
- A-13. (8-1-1952).—List of articles handed over by the Presiding Officer, Polling Station No. 209 (Puttur) in respect of booth No. 1 with an acknowledgment of the Revenue Inspector, Puttur at the foot.
- A-14. (28-11-1951).—Objections filed before the Returning Officer, Puttur Constituency by Sri M. N. Bhide to the nomination of the 1st respondent Shri Venkatramana Gowda.

- A-15. (4-3-1952).—Application of Sri N. S. Bhat to the Returning Officer, Puttur Assembly Constituency for permission to inspect Form 10 accounts of Presiding Officers of Polling stations in the Constituency.
- A-16. (6-3-1952).—Application of Sri N. S. Bhat to the Returning Officer, Puttur Assembly Constituency for certified copies of Form 10 accounts of Presiding Officers of Polling stations in the Constituency.
- A-16(a). (10-3-1952).—Order passed by the Revenue Divisional Officer, Puttur, on the application, Exhibit A-16.
- A-16(b). (13-3-1952).—Application of Sri N. S. Bhat to the Returning Officer, Puttur Assembly Constituency, for copies in answer to the order Exhibit A-16(a) and order thereon.
- A-16(c). (22-3-1952).—Application of Sri N. S. Bhat to the Returning Officer, Puttur Assembly Constituency with reference to his copy application No. 29/52 for delivery of copies of Form 10 accounts.
- A-16(d). (25-3-1952).—Application of Sri N. S. Bhat to the Returning Officer, Puttur Assembly Constituency for copies of Form 10 accounts of which copies had not been granted.
- A-16(e). (9-5-1952).—Application of Sri N. S. Bhat to the Returning Officer, Puttur Assembly Constituency for copies of Form 10 accounts of which copies had not been granted.
- A-16(f). (27-5-1952).—Memorandum issued by the Revenue Divisional Officer, Puttur with reference to the application Exhibit A-16(e).
- A-16(g). (27-6-1952).—Endorsement issued by the Returning Officer, Puttur Assembly Constituency with reference to the application Exhibit A-16(e).
- A-17. (25-3-1952).—Copy of application of Sri N. S. Bhat to the Chief Election Commissioner, New Delhi.
- A-18. (15-3-1952).—Reply sent by the Election Commission, India, to Sri N. S. Bhat, Advocate, Puttur, with reference to Exhibit A-17.
- A-19. (17-1-1952).—Application of Shri Shivarama Karanth to the Returning Officer, Puttur Constituency for action under Rule 46(iv) of the Representation of the People Rules, 1951.
- A-20. (4-1-1952).—Statement of authorised ballot papers sent to the several polling stations of Puttur Assembly Constituency.
- A-21. (14-10-1951).—Letter written by Sri A. B. Shetty to Sri D. Manjappa Hegde.
- A-22. (1948).—Printed copy of the report on the working of Co-operative Societies in the Province of Madras, for the year ended 30th June 1947.
- A-23. (10-2-1952).—Printed copy of the Administration Report and Audit Certificate of the South Kanara Central Co-operative Wholesale Stores, Ltd., Mangalore for the year 1950-51.
- A-24. (17-1-1952).—Certified copy from the Form 15 Account relating to South Kanara (South) Parliamentary Constituency.

FOR RESPONDENTS

- B-1. (18-1-1952).—Certified copy of Form 15 account of rejected ballot papers at the Madras Legislative Assembly Election for Puttur Assembly Constituency.
- B-2.—A file of 4 checkslips relating to ballot boxes of Shri Salenna, S. G. (5th respondent) from booth 1 of Polling station No. 240, booths 1 and 2 of Polling station No. 242 and booth No. 1 of Polling station No. 248 of Puttur Assembly Constituency.
- B-2(a).—A file of 4 checkslips relating to ballot boxes of Shri Ishwara, K. (2nd respondent) from booth 1 of Polling station No. 240, booths 1 and 2 of Polling station No. 242 and booth 1 of Polling station No. 248 of Puttur Assembly Constituency.
- B-2(b).—A file of 4 checkslips relating to ballot boxes of Shri Berva (4th respondent) from booth 1 of Polling station No. 240, booths 1 and 2 of Polling station No. 242 and booth 1 of Polling station No. 248 of Puttur Assembly Constituency.
- B-2(c).—A file of 4 checkslips relating to ballot boxes of Shri Naika Ramanna, M. (3rd respondent) from booth 1 of Polling station No. 240, booths 1 and 2 of Polling station No. 242 and booth 1 of Polling station No. 248 of Puttur Assembly Constituency.

B-2(d).—A file of 4 checkslips relating to ballot boxes of Shri Karantha Shivarama Kota (Petitioner) from booth 1 of Polling station No. 240, booths 1 and 2 of Polling station No. 242 and booth 1 of Polling station No. 248 of Puttur Assembly Constituency.

FOR TRIBUNAL

T-1. (10-1-1952).—Report of the Presiding Officer, Aivarnad Polling Station, to the Returning Officer, Puttur Assembly Constituency.

T-2. (10-1-1952).—Report of the Returning Officer, Puttur Assembly Constituency, to the Collector of South Kanara regarding the wrong issue of Assembly ballot papers at Aivarnad.

T-3. (16-1-1952).—Telegram from the Deputy Secretary to the Government, Public (Elections) Department, to the Returning Officer, Puttur Assembly Constituency.

T-3(a). (16-1-1952).—Post copy of the telegram Exhibit T-3.

T-4.—Checkslip relating to ballot box of Shri Ishwara, K. (2nd respondent) from booth No. 1 of Polling station No. 163 of Puttur Assembly Constituency.

T-4(a).—Checkslip relating to ballot box of Shri Ishwara, K. (2nd respondent) from booth No. 2 of Polling station No. 163 of Puttur Assembly Constituency.

T-4(b).—Checkslip relating to ballot box of Shri Ishwara, K. (2nd respondent) from booth No. 1 of Polling station No. 164 of Puttur Assembly Constituency.

T-4(c).—Checkslip relating to ballot box of Shri Ishwara, K. (2nd respondent) from booth No. 2 of Polling station No. 164 of Puttur Assembly Constituency.

T-4(d).—Checkslip relating to ballot box of Shri Ishwara, K. (2nd respondent) from booth No. 2 of Polling station No. 225 of Puttur Assembly Constituency.

T-4(e).—Checkslip relating to ballot box of Shri Ishwara, K. (2nd respondent) of booth No. 1 of Polling station No. 235 of Puttur Assembly Constituency.

T-4(f).—Checkslip relating to ballot box of Shri Ishwara, K. (2nd respondent) of booth No. 2 of Polling station No. 235 of Puttur Assembly Constituency.

T-4(g).—Checkslip relating to ballot box of Shri Ishwara, K. (2nd respondent) of booth No. 1 of Polling station No. 236 of Puttur Assembly Constituency.

T-5.—Checkslip relating to ballot box of Shri Gowda Venkatramana (1st respondent) from booth No. 1 of Polling station No. 240 of Puttur Assembly Constituency.

T-5(a).—Checkslip relating to ballot box of Shri Gowda Venkatramana (1st respondent) from booth No. 1 of Polling station No. 242 of Puttur Assembly Constituency.

T-5(b).—Checkslip relating to ballot box of Shri Gowda Venkatramana (1st respondent) from booth No. 2 of Polling station No. 242 of Puttur Assembly Constituency.

T-5(c).—Checkslip relating to ballot box of Shri Gowda Venkatramana (1st respondent) of booth No. 1 of Polling station No. 248 of Puttur Assembly Constituency.

The following witnesses were examined:

FOR PETITIONER

1. Sri K. Shivarama Karantha (Petitioner).
2. Sri M. Gangadhara.
3. Sri Dharmapala Hegde.
4. Sri N. Shanker Bhat, Advocate, Puttur.

FOR RESPONDENTS

None.

FOR TRIBUNAL

1. Sri B. Narayana Hegde (Returning Officer).

MATERIAL OBJECT MARKED

M.O. No. 1.—Ballot Box (Bungo type) used in the General Elections 1952 in the Puttur Assembly Constituency.

(Sd.) P. T. RAMAN NAYAR, *Chairman.*

(Sd.) M. RAMACHANDER,

(Sd.) K. V. SURYANARAYANA AYYAR, *Members.*

[No. 19/102/52-Elec. III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.